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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/928,785	08/13/2001	Mark Thomas Cammarota	14966.1	8428

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EXAMINER

WEBB, JAMISUE A

ART UNIT

PAPER NUMBER

3761

DATE MAILED: 06/26/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/928,785

Applicant(s)

CAMMAROTA ET AL.

Examiner

Jamisue A. Webb

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 28 April 2002.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-24,26,30,31 and 38-40 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-24,26,30,31 and 38-40 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Pri rity under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                           | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>6,7</u> . | 6) <input type="checkbox"/> Other:  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Timmons et al. (4,022,211). Timmons discloses an absorbent article with an outer cover (14), an absorbent assembly (12), with a permanent graphic (blocks, 22) and an active object graphic (letters, 16b), blocks are used to play with and letters are used to form words and to learn, therefore they are considered to be unrelated in subject matter.

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

4. Claims 1-10, and 13-19 are rejected under 35 U.S.C. 102(e) as being anticipated by Brandon et al. (5,766,389).

5. With respect to Claims 1-4: Brandon discloses a permanent character graphic (giraffe), an active object (sun, the sun rises and sets and therefore is considered to be active), a permanent object graphic (the car the giraffe is driving), and a visual segmentation graphic (all other objects in the picture besides: the giraffe and the car it is driving, and the sun). The giraffe is not

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involved in any activity with, or related to the sun, therefore the giraffe and the sun are unrelated in subject matter, and are interactively interrelated. (see figure 1)

6. With respect to claim 5: Brandon discloses the permanent character graphic involved in an activity utilizing the permanent object graphic (the giraffe the car, see figure 1).

7. With respect to claims 6-7: Brandon discloses the active object graphic (the sun) is not related in subject matter and is interactively unrelated to the permanent object graphic (the car the giraffe is driving)

8. With respect to Claims 8-10, and 17: Brandon discloses the visual segmentation object comprising a segmentation graphic that completely surrounds the permanent character and permanent object graphic. Earlier it was mentioned the examiner considered all other graphics besides the giraffe and the car the giraffe is driving and the sun, to be the visual segmentation element. The rainbow, the elephant along with the car it is driving, the lion along with the car it is driving and the ground are considered to be a segmentation graphic that is completely surrounding the giraffe and the car, the permanent character and permanent object graphics (see figure 1).

9. With respect to Claims 13-15, and 18: Brandon discloses the visual segmentation graphic with a continuous line segment that is curved and is perpendicular to an imaginary line connecting the permanent character graphic and the active object graphic, (see figure 1). The examiner considers the edge of the ground graphic that all the cars are driving on along with the top of the rainbow to be the continuous line segments, that are curved.

10. With respect to Claim 16 and 19: Brandon discloses the visual segmentation element with a background color graphic, that is a defined floor graphic and the permanent character is

positioned on the floor graphic. The examiner considers the ground the cars are driving on to be the defined floor graphic, that has a background color, and the giraffe is driving the car on it. (see figure 1)

***Claim Rejections - 35 USC § 103***

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claims 1-20, 24, 30-31, and 38-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brandon et al. (5,766,389) in view of Timmons et al. (4,022,211).

13. With respect to claims 1-7, 30 and 38: Brandon discloses training pants (10) with an outercover (34), an absorbent assembly (32), longitudinal and transversal centerlines (figures 1-4), longitudinal end edges (116, 118), first and second waist regions (26, 28) a permanent character graphic disposed in first waist region, involved in an activity with a permanent object graphic, and a visual segmentation graphic (Figure 1, the examiner considers the giraffe to be the permanent character graphic, the car the giraffe is driving the permanent object graphic (driving be the activity)), all other graphics, such as the elephant, the rainbow, the lion and the ground, are considered to be the visual segmentation element).

Brandon fails to disclose the use of an active object graphic that is interactively unrelated and unrelated in subject matter to the permanent character graphic and the permanent object graphic, is located in the crotch region and is in liquid communication with the absorbent

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assembly. Timmons discloses the use of wetness indicator graphics used in absorbent articles, in the forms of letters, which are located inside blocks and are unrelated to giraffes and cars, that become substantially invisible when wetted and located throughout the diaper, including the crotch (see abstract, along with figures 5 and 6). The examiner considers the letters to be the active object graphic, and the blocks to be another visual segmentation element.

It would have been obvious to one of ordinary skill in the art to add the wetness indicators of Timmons to the training pants of Brandon in order to provide a visual signal that the pad is wetted and assist in determining if a fresh pad is needed. (see Timmons, column 1)

14. With regard to Claims 8-20, 24, 31, and 39, which recite further limitations of graphics, the claims are rejected under 35 U.S.C. 103 (a) as being unpatentable over Brandon et al. as modified by Timmons et al. as applied to claims 1-7, 30 and 38 earlier in this action.

15. With respect to Claims 8-10, and 17: Brandon discloses the visual segmentation object comprising a segmentation graphic that completely surrounds the permanent character and permanent object graphic. Earlier it was mentioned the examiner considered all other graphics besides the giraffe and the car the giraffe is driving, to be the visual segmentation element. The sun, rainbow, the elephant along with the car it is driving, the lion along with the car it is driving and the ground are considered to be a segmentation graphic that is completely surrounding the giraffe and the car, the permanent character and permanent object graphics (see figure 1).

16. With respect to Claims 11 and 12: Timmons also discloses a visual segmentation graphic, that completely surrounds the active object. Earlier it was mentioned that the examiner considered the blocks, the letters are located in, to be another segmentation element, which is a segmentation graphic that surrounds the letters.

17. With respect to Claims 13-15, and 18: Brandon discloses the visual segmentation graphic with a continuous line segment that is curved and is perpendicular to an imaginary line connecting the permanent character graphic and the active object graphic, (see figure 1). The examiner considers the edge of the ground graphic that all the cars are driving on to be the continuous line segment, that is curved.

18. With respect to Claim 16 and 19: Brandon discloses the visual segmentation element with a background color graphic, that is a defined floor graphic and the permanent character is positioned on the floor graphic. The examiner considers the ground the cars are driving on to be the defined floor graphic, that has a background color, and the giraffe is driving the car on it. (see figure 1)

19. With respect to Claims 20 and 39, Timmons discloses the ink of the letters is in liquid communication with the absorbent assembly and is soluble in urine (column 3, line 9-14).

20. With respect to Claim 24: Brandon discloses the Permanent character being disposed on the outercover (see Figures 3 and 4 with corresponding detailed descriptions), Timmons discloses the active object being disposed on the interior of the outer cover (column 3, lines 41 – 46).

21. With respect to Claim 31, Timmons discloses the active object graphics being disposed throughout the diaper, so therefore they are longitudinally disposed between the permanent character graphics and the transverse centerline.

22. Claims 21, 23 and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brandon and Timmons as applied to claims 1-3 and 38 above, and further in view of Howell (5,389,093).

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23. Brandon as modified by Timmons fails to disclose the active object graphics comprise ink that changes colors when exposed to urine, and an active object comprising an appearing graphic that becomes more visible when exposed to the environment during use and prior to contact with urine.

Howell discloses the use of a thermally sensitive indicator that uses thermochromic ink that becomes more visible when the temperature gets above a certain level, (see abstract). This is considered to mean that the ink is capable of becoming significantly more visible without coming into actual contact with urine. Since the ink is temperature sensitive, it is also fully capable of changing colors (column 3, lines 34-38) when the ink comes into contact with the urine.

It would have been obvious to one of ordinary skill the art at the time the invention was made to have the ink used in the active object graphics of Timmons, to be thermochromic, as disclosed by Howell, so that the visual indication is not present when the user is dry, and will be present when the user secretes waste material. (see Howell column 4)

24. Claims 1-3, 22 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brandon et al (5,766,389) in view of Jitoe et al. (5,766,212).

25. With respect to claims 1-7, 30 and 38: Brandon discloses training pants (10) with an outercover (34), an absorbent assembly (32) a permanent character graphic, involved in an activity, and a visual segmentation graphic (Figure 1, the examiner considers the giraffe to be the permanent character graphic, the car the giraffe is driving to be activity the giraffe is involved in,



all other graphics, such as the elephant, the rainbow, the lion and the ground, are considered to be the visual segmentation element).

Brandon fails to disclose the use of an active object graphic that is interactively unrelated and unrelated in subject matter to the permanent character graphic and is in liquid communication with the absorbent assembly, appears when exposed to urine and is located on the absorbent assembly, facing the outercover.

Jitoe discloses the use of an active object graphic that is adapted to be visually revealed when it is wetted with discharged urine (see abstract), and that a layer of ink is defined by a tissue paper forming a part of said absorbent core (column 2, lines 8-12). Jitoe discloses the use of the graphic to be in the form of flowers, which is both interactively unrelated and unrelated in subject matter to a giraffe driving a car.

It would have been obvious to one of ordinary skill in the art to add the wetness indicators of Jitoe to the training pants of Brandon in order for a mother to be reliably informed of a timing of a diaper exchange. (see Jitoe, column 3)

#### ***Terminal Disclaimer***

26. The terminal disclaimer filed on 5/28/02 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of US Patent Number 6,307,119 has been reviewed and is accepted. The terminal disclaimer has been recorded.

*Response to Amendment*

27. Applicant's arguments filed 4-28-02 have been fully considered but they are not persuasive.

28. The applicant has argued that the term "character graphic" should be interpreted using the definition given in the specification due to the fact that the MPEP states that when the specification states the meaning that a term in the claim is intended to have, the claim is examined using that meaning: The same MPEP also states in section 2173 (a) that a broadest reasonable interpretation of the claim is given during examination. It is obvious to have characters, such as those found on a keyboard, to be on diapers (as disclosed in the rejection), therefore it is the examiner's position that it would be reasonable to interpret the word character to be a letter of the alphabet. Furthermore, if the examiner was to read the definition of "character graphic" as given in the specification, first off, it uses the phrase "or the like", therefore the examiner is unable to determine the scope of the phrase and therefore the claim. The specification also uses the phrase "human motivations", which the examiner cannot determine the metes and bounds of those phrase. Motivation can be eating, sleeping, walking running, sitting etc., therefore would a picture of a live dog, or a bird be a character? A bird or a dog both sleep and walk and run. Due to the fact that if the examiner was to read the definition of "character graphic" from the specification, into the claims, then a indefinite problem would arise, and therefore the examiner is giving the term "character graphic" the broadest reasonable interpretation.

29. With respect to Applicant's argument that Brandon does not disclose an "active graphic" as defined in the instant invention's specification: As stated above, the MPEP states that the

claims are given the broadest reasonable interpretation in the specification. The word active describes something performing an action. Is the examiner's position that driving a car is an action, or someone walking is an action. Therefore Brandon disclosing something being active. And it is the examiner's position that it would be reasonable to interpret the word active graphic to be a picture of something "driving a car" and therefore Brandon discloses an active graphic.

30. With respect to Applicant's arguments that it is not obvious to combine Brandon with Timmons or Jitoe: The applicant has argued that the references teach away from each other, cause the graphics of Brandon are in fact unrelated to the graphics of Timmons and Jitoe, therefore no motivation exists to combine the two. However, the combinations of Brandon and Timmons and Brandon and Jitoe were made due to the fact that Brandon discloses an absorbent article with only a picture/graphic that is not effected by wetness. Therefore if one of ordinary skill in the art would want a wetness indicator, one would look for indicating graphics in the crotch region, due to the fact that is where wetness occurs. Therefore one of ordinary skill in the art would use either Timmons or Jitoe as the indicating graphics and combine the two and it just happens that the two graphics are unrelated. The motivation comes from adding wetness indicating graphics, the motivation does not come from adding "unrelated" graphics.

### ***Conclusion***

31. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO


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MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jamisue A. Webb whose telephone number is (703) 308-8579. The examiner can normally be reached on M-F (7:30 - 4:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dennis Ruhl can be reached on (703)308-2262. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9302 for regular communications and (703) 872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

jaw   
June 25, 2002

  
DENNIS RUHL  
PRIMARY EXAMINER